

EXAMINER'S RESTRICTION:

1. Claims 1 - 22, drawn to a device for mixing medical fluids, classified in class 604, subclass 411.
2. Claims 23 - 45, drawn to a method for mixing medical fluids including the use of a double-membrane bayonet coupling, classified in class 604, subclass 411.

ELECTION AND REMARKS:

Responsive to Examiner's Restriction Requirement, Applicants elect Group I including Claims 1 – 22, with traverse. With this election of claims, method Claims 23 - 45 are cancelled from the present invention.

Applicants perceive at least two reasons why the Restriction Requirement is not proper. However, election of claims is made with traverse based upon facts presented from the Office Action, which stated:

“The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process using that product (MPEP §806.06(h)). In the instant case, the method claims the use of components that are not recited as part of the claimed apparatus, including, among other components, the double-membrane bayonet coupling. Therefore, the process as claimed in Group II must be practiced with a materially different product than the one claimed in Group 1.

A conclusion that “the method claims - use - - components that are not recited as part of the claimed apparatus,” is not borne out by claims pending in the present application since claim 1 recites, “said injection port being sealed by a fluid-proof membrane which can be penetrated by an injection needle when injecting said second medical fluid.” Independent method claim 23 also includes a fluid-proof membrane according to the recitation, “penetrating fluid-proof membranes included in said double-membrane bayonet coupling by means of said injection needle,” which provides the desired relationship between device and method claims. The “double-membrane bayonet coupling” includes “a fluid-proof membrane” found both in claim 1 and claim 23.

Another reason for considering restriction requirement to be inappropriate is the fact that the Examiner asserts, “the process as claimed in Group II must be practiced with a materially different product,” but fails to suggest examples of such materially different products.

The Office Action further indicates that claims 1 - 45 should be considered as a single group by determining that the device and method claims both fall in Class 604, subclass 411. A single search of the prior art, therefore, suffices for examination of all claims of the present application.

For the reasons given, applicants submit that claims of Group I and Group II are not separable into distinct inventions and request withdrawal of the restriction requirement.